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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H-2007-055

BELINDA RUE MIRAGLIA, R.C.P.
7146 Forum Street
San Diego, CA 92111

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respiratory Care Practitioner License No. 15278
Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Stephanie Nunez (Complainant) is the Executive Officer of the
Respiratory Care Board of California. She brought this action solely in her official capacity and
is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of
California, by David P. Chan, Deputy Attorney General.

2. Belinda Rue Miraglia, R.C.P. (Respondent) is represented in this
proceeding by attorney Michael J. Messina, Esq., whose address is Woods & Messina, 550 West
C Street, Suite 1670, San Diego, CA 92101.

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3. On or about June 16, 1992, the Respiratory Care Board of California issued Respiratory Care Practitioner License No. 15278 to Respondent Belinda Rue Miraglia, R.C.P. The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought in Accusation No. 1H-2007-055 and will expire on May 31, 2010, unless renewed.

JURISDICTION

4. Accusation No. 1H-2007-055 was filed before the Respiratory Care Board (Board) , Department of Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on June 9, 2008. Respondent timely filed her Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 1H-2007-055 is attached as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. 1H-2007-055. Respondent has also carefully read, discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 1H-2007-055.

4 9. Respondent agrees that her Respiratory Care Practitioner License No.
5 15278 is subject to discipline and she agrees to be bound by the Board's imposition of discipline
6 as set forth in the Disciplinary Order below.

7 **CONTINGENCY**

8 10. This stipulation shall be subject to approval by the Respiratory Care
9 Board. Respondent understands and agrees that counsel for Complainant and the staff of the
10 Respiratory Care Board of California may communicate directly with the Board regarding this
11 stipulation and settlement, without notice to or participation by Respondent or her counsel. By
12 signing the stipulation, Respondent understands and agrees that she may not withdraw her
13 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon
14 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement
15 and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be
16 inadmissible in any legal action between the parties, and the Board shall not be disqualified from
17 further action by having considered this matter.

18 11. The parties understand and agree that facsimile copies of this Stipulated
19 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
20 force and effect as the originals.

21 12. In consideration of the foregoing admissions and stipulations, the parties
22 agree that the Board may, without further notice or formal proceeding, issue and enter the
23 following Disciplinary Order:

24 **DISCIPLINARY ORDER**

25 IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 15278
26 issued to Respondent BELINDA RUE MIRAGLIA, R.C.P., is revoked. However, the
27 revocation is stayed and Respondent is placed on probation for five (5) years on the following
28 terms and conditions.

1 1. WORK SCHEDULES Respondent shall be required to submit to the
2 probation monitor work schedules on a monthly basis for the length of probation. Respondent
3 shall ensure the Board has a copy of her current work schedule at all times for each place of
4 employment.

5 Failure to submit current work schedules on a continuous basis shall constitute a
6 violation of probation and shall result in the filing of an accusation and/or a petition to revoke
7 probation against Respondent's respiratory care practitioner license.

8 2. BIOLOGICAL FLUID TESTING Respondent, at her expense, shall
9 participate in random testing, including, but not limited to, biological fluid testing (i.e. urine,
10 blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the
11 Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire
12 probation period. The frequency and location of testing will be determined by the Board.

13 At all times, Respondent shall fully cooperate with the Board or any of its
14 representatives, and shall, when directed, appear for testing as requested and submit to such tests
15 and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other
16 controlled substances.

17 If Respondent is unable to provide a specimen in a reasonable amount of time
18 from the request, while at the work site, Respondent understands that any Board representative
19 may request from the supervisor, manager or director on duty to observe Respondent in a manner
20 that does not interrupt or jeopardize patient care in any manner until such time Respondent
21 provides a specimen acceptable to the Board.

22 Failure to submit to testing or appear as requested by any Board representative for
23 testing, as directed shall constitute a violation of probation and shall result in the filing of an
24 accusation and/or a petition to revoke probation against Respondent's respiratory care
25 practitioner license.

26 3. ABSTENTION FROM USE OF ANY AND ALL MOOD ALTERING
27 SUBSTANCES Respondent shall completely abstain from the possession or use of alcohol,
28 controlled substances, dangerous drugs, and any and all other mood altering drugs, substances

1 and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed
2 practitioner as part of a documented medical treatment.

3 Respondent shall execute a release authorizing the release of pharmacy and
4 prescribing records as well as physical and mental health medical records. Respondent shall also
5 provide information of treating physicians, counselors or any other treating professionals as
6 requested by the Board.

7 Respondent shall ensure that she is not in the presence of or in the same physical
8 location as individuals who are using illegal substances, even if Respondent is not personally
9 ingesting the drug(s).

10 Any positive result that registers over the established laboratory cutoff level shall
11 constitute a violation of probation and shall result in the filing of an accusation and/or a petition
12 to revoke probation against Respondent's respiratory care practitioner license.

13 Respondent also understands and agrees that any positive result that registers over
14 the established laboratory cutoff level shall be reported to each of Respondent's employers.

15 4. RESTRICTION OF PRACTICE Respondent may not be employed or
16 function as a member of a respiratory care management or supervisory staff during the entire
17 length of probation. This includes lead functions.

18 Respondent is prohibited from working in home care unless it is under direct
19 supervision and personal observation.

20 5. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports
21 of Performance are due for each year of probation and the entire length of probation from each
22 employer, as follows:

23 For the period covering January 1st through March 31st, reports are to be
24 completed and submitted between April 1st and April 7th. For the period covering April 1st
25 through June 30th, reports are to be completed and submitted between July 1st and July 7th. For
26 the period covering July 1st through September 30th, reports are to be completed and submitted
27 between October 1st and October 7th. For the period covering October 1st through December 31st,
28 reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.

6. OBEY ALL LAWS Respondent shall obey all laws, whether federal, state, or local. Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the Board in writing within 14 days of any incident resulting in her arrest, or charges filed against, or a citation issued against Respondent.

7. QUARTERLY REPORTS Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

8. PROBATION MONITORING PROGRAM Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

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Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's Probation Program at any time she has a question or concern regarding her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

9. PROBATION MONITORING COSTS All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, she shall be required instead to submit an explanation of why she is unable to submit the costs, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care

1 practitioner license will not be renewed, until such time all probation monitoring costs have been
2 paid.

3 The filing of bankruptcy by Respondent shall not relieve the Respondent of her
4 responsibility to reimburse the Board for costs incurred.

5 10. EMPLOYMENT REQUIREMENT Respondent shall be employed a
6 minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of her
7 probation period.

8 Respondent may substitute successful completion of a minimum of thirty (30)
9 additional continuing education hours, beyond that which is required for license renewal, for
10 each 8 months of employment required. Respondent shall submit proof to the Board of
11 successful completion of all continuing education requirements. Respondent is responsible for
12 paying all costs associated with fulfilling this term and condition of probation.

13 11. NOTICE TO EMPLOYER Respondent shall be required to inform her
14 employer, and each subsequent employer during the probation period, of the discipline imposed
15 by this decision by providing her supervisor and director and all subsequent supervisors and
16 directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in
17 this matter prior to the beginning of or returning to employment or within 14 days from each
18 change in a supervisor or director.

19 If Respondent is employed by or through a registry [and is not restricted from
20 working for a registry], Respondent shall make each hospital or establishment to which she is
21 sent aware of the discipline imposed by this decision by providing her direct supervisor and
22 administrator at each hospital or establishment with a copy of this decision, and the Statement(s)
23 of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be
24 done each time there is a change in supervisors or administrators.

25 The employer will then inform the Board, in writing, that she is aware of the
26 discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting
27 the Board to obtain additional forms, if needed. All reports completed by the employer must be
28 submitted from the employer directly to the Board.

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.

12. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes, but is not limited to, applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide her physical residence address as well.

13. SURRENDER OF LICENSE Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, she may request the voluntary surrender of her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent shall deliver her wallet and wall certificate to the Board or its designee and she shall no longer practice respiratory care. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a respiratory care license, the application shall be treated as a petition for reinstatement of a revoked license.

14. COST RECOVERY Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$2,804.50 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

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1 If Respondent is unable to submit costs timely, she shall be required instead to
2 submit an explanation of why she is unable to submit these costs in part or in entirety, and the
3 date(s) she will be able to submit the costs including payment amount(s). Supporting
4 documentation and evidence of why the Respondent is unable to make such payment(s) must
5 accompany this submission.

6 Respondent understands that failure to submit costs timely is a violation of
7 probation, and submission of evidence demonstrating financial hardship does not preclude the
8 Board from pursuing further disciplinary action. However, Respondent understands that
9 providing evidence and supporting documentation of financial hardship may delay further
10 disciplinary action.

11 Consideration to financial hardship will not be given should Respondent violate
12 this term and condition, unless an unexpected AND unavoidable hardship is established from the
13 date of this order to the date payment(s) is due.

14 The filing of bankruptcy by the Respondent shall not relieve the Respondent of
15 her responsibility to reimburse the Board for these costs.

16 15. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods
17 of residency or practice outside California, whether the periods of residency or practice are
18 temporary or permanent, will toll the probation period, but will not toll the cost recovery
19 requirement, nor the probation monitoring costs incurred. Travel out of California for more than
20 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the
21 Board, in writing, within 14 days, upon her return to California and prior to the commencement
22 of any employment where representation as a respiratory care practitioner is/was provided.

23 16. VALID LICENSE STATUS Respondent shall maintain a current, active
24 and valid license for the length of the probation period. Failure to pay all fees and meet
25 Continuing Education requirements prior to her license expiration date shall constitute a
26 violation of probation.

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1 17. VIOLATION OF PROBATION If Respondent violates any term of the
2 probation in any respect, the Board, after giving Respondent notice and the opportunity to be
3 heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to
4 revoke probation is filed against Respondent during probation, the Board shall have continuing
5 jurisdiction and the period of probation shall be extended until the matter is final. No petition for
6 modification of penalty shall be considered while there is an accusation or petition to revoke
7 probation or other penalty pending against Respondent.

8 18. COMPLETION OF PROBATION Upon successful completion of
9 probation, Respondent's license shall be fully restored.

10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and
12 have fully discussed it with my attorney, Michael J. Messina, Esq. I understand the stipulation
13 and the effect it will have on my Respiratory Care Practitioner License No. 15278. I enter into
14 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
15 agree to be bound by the Decision and Order of the Respiratory Care Board.

16 DATED: August 11, 2008.

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18 Original signed by: _____
19 BELINDA RUE MIRAGLIA, R.C.P.
20 Respondent

21 I have read and fully discussed with Respondent BELINDA RUE MIRAGLIA,
22 R.C.P., the terms and conditions and other matters contained in the above Stipulated Settlement
23 and Disciplinary Order. I approve its form and content.

24 DATED: August 11, 2008.

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26 Original signed by: _____
27 MICHAEL J. MESSINA, ESQ.
28 Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

DATED: August 20, 2008

EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General

Original signed by: _____
DAVID P. CHAN
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2008801204
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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BELINDA RUE MIRAGLIA, R.C.P.
7146 Forum Street
San Diego, CA 92111

Respiratory Care Practitioner License No. 15278

Respondent.

Case No. 1H-2007-055

OAH No.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 2, 2008.

It is so ORDERED September 22, 2008.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA